

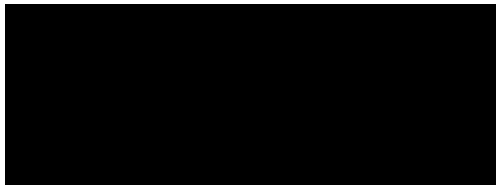
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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE:

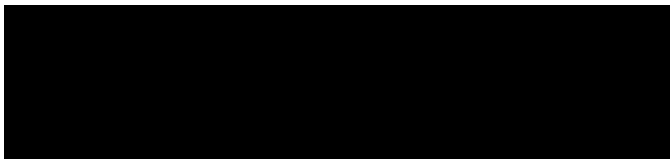


Office: VERMONT SERVICE CENTER

Date: APR 07 2004

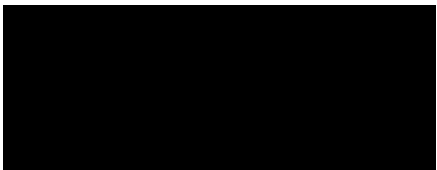
IN RE:

Petitioner:  
Beneficiary:



PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Cindy N. Gomez for*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Ecuador who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to respond to a request for evidence to establish that she: (1) had been battered by, or had been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or had been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; and (2) is a person of good moral character. The director, therefore, denied the petition.

On appeal, counsel asserts that the denial based on the applicant's failure to respond to the Service's (now Citizenship and Immigration Services) request, is an error because he did mail a response to the director's request. He submits a copy of his correspondence dated November 25, 2002, enclosing a photograph of the petitioner and her spouse, and requesting that a decision be rendered based on the evidence in the file.

8 C.F.R. § 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
- (C) Is residing in the United States;
- (D) Has resided in the United States with the citizen or lawful permanent resident spouse;
- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
- (F) Is a person of good moral character;
- (G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child<sup>1</sup>; and
- (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

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<sup>1</sup> On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, shows that the petitioner arrived in the United States on July 1, 1984. However, her current immigration status or how she entered the United States was not shown. The petitioner married her United States citizen spouse on January 7, 1997, at New York, New York. On May 9, 2001, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

The director reviewed and discussed the evidence furnished by the petitioner and contained in the record of proceeding, and determined that it was insufficient to establish the petitioner's eligibility for the benefit sought. Therefore, the petitioner was requested on July 13, 2001, to submit additional evidence to establish that she: (1) is residing in the United States pursuant to 8 C.F.R. § 204.2(c)(1)(i)(C); (2) had resided with her U.S. citizen spouse pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D); (3) had been battered by, or had been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who had been battered by, or had been the subject of extreme cruelty perpetrated by, the U.S. citizen or lawful permanent resident during the marriage pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E); and (4) entered into the marriage to the U.S. citizen spouse in good faith pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H). The applicant was advised that she had 60 days to present additional evidence. On October 26, 2001, the applicant was granted an additional 60 days in which to submit the requested evidence.

The director reviewed the petitioner's response and noted that the evidence did not fully address all his requests. He determined that after reviewing the petitioner's testimony and evidence furnished to establish her claim of extreme cruelty, additional evidence was needed to fully cover the factors required in establishing extreme cruelty. Therefore, the petitioner was again requested on October 25, 2002, to submit, within 60 days, additional evidence to establish her claim of extreme cruelty perpetrated by her U.S. citizen spouse pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E). She was also requested to submit evidence of her good moral character pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F). Based on the petitioner's failure to respond, the director denied the petition on April 23, 2003.

Counsel, on appeal, asserts that he did respond to the director's request. He submits a copy of his response, dated November 25, 2002, stating, in part:

Enclosed, please find a photograph taking [sic] on January 7, 1997 at 1 Center Street, New York, NY. The picture is taken just after their wedding ceremony.

Kindly accept this photo as a supplement to the evidence previously submitted for this applicant.

At this time, we request that a decision be rendered based on all evidence in the file. We await your determination.

There is no evidence in the record that counsel's letter of November 25, 2002, was received at the Service Center. Even if counsel's letter was indeed sent to the Service Center as indicated by counsel, the letter did not address the claim of extreme cruelty and good moral character as requested by the director. As stated above, the claim of qualifying abuse was evaluated by the director after a review of the evidence furnished, and concluded that the evidence did not fully cover the factors required in establishing extreme cruelty. Furthermore, although the director listed in his requests of July 13, 2001 and October 25, 2002, examples of evidence the petitioner may submit to show that she has been the subject of extreme cruelty, these were not submitted, nor did she submit an explanation as to why such documentation is unavailable.

Counsel, on appeal, states that "Joan Barrett" made a statement regarding the petitioner's character. This statement, however, is insufficient to establish good moral character. The director, in his request for additional evidence dated October 25, 2002, listed evidence the petitioner may submit to show good moral character. However, these were not submitted, nor did the petitioner submit an explanation as to why such documentation is unavailable.

As determined by the director, the petitioner has failed to submit additional evidence to overcome the director's findings pursuant 8 C.F.R. § 204.2(c)(1)(i)(E) and (F).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.